

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 735 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ANIS KASAMBHAI HALA

Versus

STATE OF GUJARAT

Appearance:

MR YS LAKHANI with MR SAKHEEL A QURESHI for Petitioner
MR AG URAIZEE, APP with Mr.M.R.ANAND, PP
for Respondent No. 1
SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 03/08/96

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr.A.G.Uraizee,
learned A.P.P. with Mr.M.R.Anand, learned P.P. on behalf
of respondent No.1 - State.

2. The Judgment and order dated 22.3.1996 rendered

by the learned J.M.F.C., Sihori at Ex.1 and the Judgment and order passed by the learned Addl. Sessions Judge, Palanpur, District Banas Kantha in Criminal Revision Application No. 36/96 have been brought under challenge in this petition under Article 227 of the Constitution of India.

3. It is the case of the petitioner that he has been carrying on transport business and has been the owner of Ambassador Car No. GJ - 11 T - 2048. His brother Iqbal Kasam Hala was driving the said car as a taxi. On 17.10.1994 when three unknown persons engaged him for going to Thara in District Banas Kantha from Junagadh, on its way to the said place the said unknown persons had killed the petitioner's brother Iqbal Kasam Hala and ran away with the aforesaid car towards Rajasthan. In respect of the said offences the complaint was lodged by one Shri Rameshchandra Valjibhai Thakkar on 18.10.1994 since the dead body of the petitioner's said brother was found on or nearby the road. Thereafter investigation was carried out and during the investigation the car was seized and the accused were arrested by the police.

4. In the background of the aforesaid fact with regard to commission of offence of murder of petitioner's brother and other offences the petitioner filed application before the learned J.M.F.C., Sihori for interim custody of the aforesaid ambassador car. The learned Magistrate rejected the said application resulting in the petitioner filing the Criminal Revision Application as aforesaid. Since the learned Addl. Sessions Judge, Palanpur, District Banas Kantha also rejected the said Revision Application the petitioner is here before this Court, as stated above.

5. The submission of Mr.Y.S.Lakhani, learned Advocate appearing with Mr.S.A.Qureshi, learned Advocate for the petitioner is that both the Courts below have failed to exercise their jurisdiction. The respondent No.2 - accused has been served with the process of notice as also the process of the Rule. He has not come forward to claim the interim custody of the vehicle in question. In the background of these facts it would be of vital importance to note that the learned A.P.P. who appeared before the learned Magistrate, Sihori, had expressed that the interim custody could be handed over to the petitioner. This is over and above the fact that the police opinion was also in favour of the handing over the interim custody of the car to the petitioner. In view of such facts and the circumstances of the case, I am of the opinion that the Courts below have failed to exercise the

jurisdiction vested in them. Hence, following order is passed :

The impugned Judgment and orders of Courts below are hereby quashed and set aside. The interim custody of the car in question will be handed over to the petitioner on the petitioner furnishing a bond in the sum of Rs.one lac and on condition that it shall not be sold or transferred in any manner to anybody till the matter is finally disposed of and on condition that the said car is maintained properly till the aforesaid criminal proceeding is finally terminated and finally on condition that the said car shall be produced before the concerned learned Magistrate/Court as and when required. It is made clear that the petitioner shall be under the permission of this Court to have a registration number changed from RJ - 19 C - 738 in Rajasthan to GJ - 11T 2048 in Gujarat, however, without changing the inscription on the Engine. Rule made absolute in the aforesaid terms.

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